

From: Brian Stults
To: Microsoft ATR
Date: 1/23/02 1:56pm
Subject: Microsoft Settlement

Dear Sirs and Madams:

I am writing pursuant to the Tunney Act public comment period to express my dissatisfaction with the Microsoft antitrust settlement.

The proposed settlement will not prevent Microsoft from maintaining its monopoly in the computer industry. The findings of fact clearly described a pattern of corporate behavior that evidenced little respect for antitrust law or public sentiment. Though the proposed remedies themselves may be adequate, the enforcement measures will not provide enough incentive for Microsoft to fundamentally alter its behavior. History demonstrates that Microsoft will not alter its behavior unless it is clearly in its competitive interests to do so. The proposed remedies attempt to force Microsoft to change its behavior in order to reduce its power in the market place. This will not succeed.

The only measures that can be effective are those that immediately change the competitive landscape, and then free Microsoft to struggle for power in this new, more level playing field. I agree with the court that a structural remedy is cumbersome and not likely to be effective. A technological remedy, with objective, quantifiable measures, is the only remedy that can be both effective and in the public's interest.

The competitive advantages of an operating system monopoly are twofold. First, Microsoft negotiates from a very powerful position with OEMs and ISPs. Second, their application software can be developed with special knowledge of the operating system and (optionally) delivered with the operating system to gain better market penetration. Any remedy must address both of these monopolistic advantages.

While I do not claim to be able to construct a better remedy myself, I think it is clear that any remedy must involve forcing Microsoft to open all of its APIs and file formats. Any time two pieces of MS software communicate out-of-process, the protocol for their communication must be public. Enforcement could come in the form of a court-appointed authority that had the right to demand to see the source code of any MS-published software and compare the documented APIs to the source code. If they were not the same or if the source code is not delivered within a few days, MS should be fined 1/356th of its profit (this can be calculated after the fact at the end of each quarter) per-day until it satisfies the requirements. This would ensure that the applications of Microsoft's competitors have the same opportunity to succeed on the Windows platform as those of Microsoft itself. Microsoft may maintain its operating systems monopoly, but it will not be able to use to

establish new monopolies in other market segments.

Thank you very much for reading and considering my comments.

Sincerely,
Brian Stults

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